

AMENDED IN SENATE APRIL 2, 2014

**SENATE BILL**

**No. 1302**

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**Introduced by Senator Wyland**

February 21, 2014

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An act to ~~amend Section 368 of the Penal Code~~, *add Section 15657.4 to the Welfare and Institutions Code*, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as amended, Wyland. Elder *financial* abuse.

*The Elder Abuse and Dependent Adult Civil Protection Act authorizes compensatory damages and other relief for an elder or dependent adult who suffers financial abuse. The act defines financial abuse as, among other actions, taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.*

*This bill would require a court to notify the district attorney in the relevant jurisdiction of a civil judgment or settlement based on a violation of any state elder financial abuse law.*

~~Under existing law, a person who is a caretaker of an elder or dependent adult who violates any law proscribing theft, embezzlement, forgery, fraud, or specified identify theft laws, is subject to a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 15657.4 is added to the Welfare and  
2     Institutions Code, to read:

3     15657.4. The court shall notify the district attorney of the  
4     relevant jurisdiction of a civil judgment or settlement based on a  
5     violation of any state elder financial abuse law.

6     SECTION 1. ~~Section 368 of the Penal Code is amended to~~  
7     read:

8     368. (a) ~~The Legislature finds and declares that crimes against~~  
9     ~~elders and dependent adults are deserving of special consideration~~  
10    ~~and protection, not unlike the special protections provided for~~  
11    ~~minor children, because elders and dependent adults may be~~  
12    ~~confused, on various medications, mentally or physically impaired,~~  
13    ~~or incompetent, and therefore less able to protect themselves, to~~  
14    ~~understand or report criminal conduct, or to testify in court~~  
15    ~~proceedings on their own behalf.~~

16    ~~(b) (1) A person who knows or reasonably should know that a~~  
17    ~~person is an elder or dependent adult and who, under circumstances~~  
18    ~~or conditions likely to produce great bodily harm or death, willfully~~  
19    ~~causes or permits any elder or dependent adult to suffer, or inflicts~~  
20    ~~thereon unjustifiable physical pain or mental suffering, or having~~  
21    ~~the care or custody of any elder or dependent adult, willfully causes~~  
22    ~~or permits the person or health of the elder or dependent adult to~~  
23    ~~be injured, or willfully causes or permits the elder or dependent~~  
24    ~~adult to be placed in a situation in which his or her person or health~~  
25    ~~is endangered, is punishable by imprisonment in a county jail not~~  
26    ~~exceeding one year, or by a fine not to exceed six thousand dollars~~  
27    ~~(\$6,000), or by both that fine and imprisonment, or by~~  
28    ~~imprisonment in the state prison for two, three, or four years.~~

29    ~~(2) If in the commission of an offense described in paragraph~~  
30    ~~(1), the victim suffers great bodily injury, as defined in Section~~  
31    ~~12022.7, the defendant shall receive an additional term in the state~~  
32    ~~prison as follows:~~

33    ~~(A) Three years if the victim is under 70 years of age.~~

34    ~~(B) Five years if the victim is 70 years of age or older.~~

35    ~~(3) If in the commission of an offense described in paragraph~~  
36    ~~(1), the defendant proximately causes the death of the victim, the~~  
37    ~~defendant shall receive an additional term in the state prison as~~  
38    ~~follows:~~

1 ~~(A) Five years if the victim is under 70 years of age.~~

2 ~~(B) Seven years if the victim is 70 years of age or older.~~

3 ~~(c) A person who knows or reasonably should know that a~~  
4 ~~person is an elder or dependent adult and who, under circumstances~~  
5 ~~or conditions other than those likely to produce great bodily harm~~  
6 ~~or death, willfully causes or permits an elder or dependent adult~~  
7 ~~to suffer, or inflicts thereon unjustifiable physical pain or mental~~  
8 ~~suffering, or having the care or custody of an elder or dependent~~  
9 ~~adult, willfully causes or permits the person or health of the elder~~  
10 ~~or dependent adult to be injured or willfully causes or permits the~~  
11 ~~elder or dependent adult to be placed in a situation in which his or~~  
12 ~~her person or health may be endangered, is guilty of a~~  
13 ~~misdemeanor. A second or subsequent violation of this subdivision~~  
14 ~~is punishable by a fine not to exceed two thousand dollars (\$2,000);~~  
15 ~~or by imprisonment in a county jail not to exceed one year, or by~~  
16 ~~both that fine and imprisonment.~~

17 ~~(d) A person who is not a caretaker who violates any law~~  
18 ~~proscribing theft, embezzlement, forgery, or fraud, or who violates~~  
19 ~~Section 530.5 proscribing identity theft, with respect to the property~~  
20 ~~or personal identifying information of an elder or a dependent~~  
21 ~~adult, and who knows or reasonably should know that the victim~~  
22 ~~is an elder or a dependent adult, is punishable as follows:~~

23 ~~(1) By a fine not exceeding two thousand five hundred dollars~~  
24 ~~(\$2,500), or by imprisonment in a county jail not exceeding one~~  
25 ~~year, or by both that fine and imprisonment, or by a fine not~~  
26 ~~exceeding ten thousand dollars (\$10,000), or by imprisonment~~  
27 ~~pursuant to subdivision (h) of Section 1170 for two, three, or four~~  
28 ~~years, or by both that fine and imprisonment, when the moneys,~~  
29 ~~labor, goods, services, or real or personal property taken or obtained~~  
30 ~~is of a value exceeding nine hundred fifty dollars (\$950).~~

31 ~~(2) By a fine not exceeding one thousand dollars (\$1,000), by~~  
32 ~~imprisonment in a county jail not exceeding one year, or by both~~  
33 ~~that fine and imprisonment, when the moneys, labor, goods,~~  
34 ~~services, or real or personal property taken or obtained is of a value~~  
35 ~~not exceeding nine hundred fifty dollars (\$950).~~

36 ~~(e) A caretaker of an elder or a dependent adult who violates~~  
37 ~~any law proscribing theft, embezzlement, forgery, or fraud, or who~~  
38 ~~violates Section 530.5 proscribing identity theft, with respect to~~  
39 ~~the property or personal identifying information of that elder or~~  
40 ~~dependent adult, is punishable as follows:~~

~~(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).~~

~~(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).~~

~~(f) A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.~~

~~(g) As used in this section, “elder” means a person who is 65 years of age or older.~~

~~(h) As used in this section, “dependent adult” means a person who is between 18 and 64 years of age, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent adult” includes a person between 18 and 64 years of age who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.~~

~~(i) As used in this section, “caretaker” means a person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.~~

~~(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.~~

1     (k) ~~In any case in which a person is convicted of violating these~~  
2 ~~provisions, the court may require him or her to receive appropriate~~  
3 ~~counseling as a condition of probation. A defendant ordered to be~~  
4 ~~placed in a counseling program shall be responsible for paying the~~  
5 ~~expense of his or her participation in the counseling program as~~  
6 ~~determined by the court. The court shall take into consideration~~  
7 ~~the ability of the defendant to pay, and no defendant shall be denied~~  
8 ~~probation because of his or her inability to pay.~~

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